

Service Date: August 22, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF NORTHWESTERN)	UTILITY DIVISION
ENERGY, Petition by LARGE CUSTOMER)	
GROUP, CONSUMER COUNSEL, and)	DOCKET NO. D2003.8.114
ENERGY SHARE, regarding Universal)	
System Benefits, Related Charges, Revenue)	ORDER NO. 6504
Accounting, and Use of Funds)	

PROPOSED ORDER ON NORTHWESTERN ENERGY
ELECTRIC AND GAS UNIVERSAL SYSTEMS BENEFITS PROGRAMS

Please Note: This order is a proposed order of the PSC. Persons directly affected by this order may have certain rights to request the PSC conduct additional procedures regarding this matter. Under the circumstances, including an expectation that it is unlikely that there will be an objection and the possible need for expedited action, this proposed order becomes the final order of the PSC 21 days from the service date above, without further action of the PSC, unless any person directly affected files an objection within 20 days of the service date above. Objections to this proposed order, if any, must be filed with the PSC, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, original and 10 copies. Objections, if any, must be clearly stated and supported by factual and legal argument.

BACKGROUND

1. On August 12, 2003, the Montana Large Customer Group ("LCG"), Energy Share of Montana, Inc. ("Energy Share") and the Montana Consumer Counsel ("MCC"), collectively referred to herein as "Petitioners," requested that the Montana Public Service Commission ("PSC" or "Commission") act to preserve and protect Universal System Benefits ("USB") programs.

2. Energy Share receives USB funds, by Commission direction and through large customer contributions, which are applied to qualified public purposes. According to the Petitioners, in Fiscal Year 2002, 1,292 NWE low-income families received

assistance through USB and Energy Share funds. Energy Share has previously requested that the Commission segregate USB accounts held by NWE to ensure any interest earned in those accounts remain with USB funds and do not accrue to NWE. Energy Share stated that it would create a severe hardship on recipients of emergency energy assistance from Energy Share, or other low-income energy assistance programs, if the collection and distribution of USB funds were disrupted by NWE financial difficulties, such as by a possible bankruptcy proceeding. Energy Share believes it is essential to segregate USB accounts both to protect the public interest in the funds and to avoid disruption in vital assistance.

3. LCG members make substantial payments toward USB programs. NWE has reported that, in 2002, more than \$2,437,000 was collected in electric USB charges from large customers as a class. Large customers are allowed by statute to obtain credits or reimbursement (up to the USB amount they have paid) for qualifying expenditures on energy efficiency or contributions to low-income energy assistance programs. LCG stated that its members have made substantial investments in energy efficiency and significant contributions to Energy Share under the electric USB program. Annual reports are filed with DOR documenting these qualifying expenditures. According to LCG, it would be disruptive of energy conservation efforts, as well as low-income energy contributions, if USB funds were diverted or delayed in a bankruptcy filing by NWE or by other actions.

4. MCC urged the Commission to take all necessary steps to track, account for, and preserve USB funds for the benefit of current and prospective consumer beneficiaries of USB programs. This step is in the interest of NWE customers and of the public purposes served by the USB programs.

5. Petitioners understand that other entities collecting USB funds have maintained segregated accounts. No undue discrimination or hardship would be imposed on NWE if USB public purpose funds are maintained in segregated, interest-bearing accounts for the benefit of these programs, so as to avoid confusion with NWE assets or interests. Petitioners believe it would be beneficial also to NWE to avoid any confusion.

6. Petitioners requested that the Commission promptly act to preserve and protect USB funds collected by NWE from financial contingencies and to ensure the uninterrupted availability of USB funds for the public purposes mandated by the Montana Legislature and supervised by the Commission.

7. In particular, Petitioners requested that the Commission authorize and direct NWE to segregate both electric and natural gas USB funds in specifically identified USB accounts. Such USB funds and accounts should not be intermingled with any other NWE (or NorthWestern Corporation) funds or accounts, should bear interest for the benefit of the USB program, and should be clearly identified and treated as public purpose funds and not as NWE property.

8. Petitioners stated this segregation of USB funds should not be construed to the detriment of NWE recovering reasonable costs incurred in its administration of USB collection, credits, reimbursements or forwarding of funds as provided by law and directed by the PSC.

FINDINGS AND CONCLUSIONS OF LAW

9. NWE furnishes electric and natural gas service for consumers in the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. The Commission properly exercises jurisdiction over NWE's rates and operations. §§ 69-3-101 and 69-3-102, MCA.

10. The Commission exercises authority over public utilities and the electric and natural gas utility industry restructuring pursuant to its authority under Title 69, Chapter 8, MCA (Senate Bill 390 or "Electric Utility Industry Restructuring and Customer Choice Act," effective May 2, 1997 and Title 69, Chapter 3, MCA (Senate Bill 396 or "NATURAL GAS ACT TITLE").

11. The Montana Legislature has established both electric and natural gas USB programs to support certain public service purposes, including low-income energy assistance, and energy efficiency and conservation. § 69-8-402 MCA (electric USB) and § 69-3-1408 MCA (gas USB).

12. The Commission has the authority and responsibility to implement a USB charge in both electric and natural gas rates to fund the respective USB programs.

13. The Commission has approved NWE tariffs to collect such funds as Schedule Nos. E-USBC-1 (Electric Universal System Benefits Charge) and USBC-1 (Universal System Benefits Charge [gas]).

14. Pursuant to these tariffs, and with PSC direction¹, NWE acts as a conduit to collect and apply USB public purpose funds. Funds not directly applied or reimbursed through authorized credits are paid to the “universal low-income energy assistance fund” established in § 69-8-412. The Department of Environmental Quality is charged with administering these residual funds for identified public purposes.

15. USB funds collected by NWE are public purpose funds and such funds are not property of NWE. NWE collects funds that are 100% the proceeds of a special charge specifically identified and mandated by the Montana Legislature, and collected by NWE for public purposes pursuant to PSC direction and approved tariffs. NWE is merely a conduit for USB funds and is intended effectively to pass through those funds by ensuring that they are expended or forwarded solely for designated programs and purposes as established by the Montana Legislature and implemented by the Commission.

16. In the handling of USB funds, NWE must track and account for all USB funds it collects. USB funds are effectively held in constructive trust for the sole benefit of USB public purpose programs and participants and beneficiaries of those programs.

17. In performing its function as a conduit for USB funds, NWE may incur obligations to qualifying customers, vendors and contractors, as well as reasonable costs of administering the program. Under these circumstances, NWE is allowed to recover such costs as allowed by statute and administrative rule, but NWE has no contingent or vested interest in USB funds, which must be expended or transferred only for their intended public purposes.

18. USB funds must be applied to their mandated purposes regardless of whether the funds are owed on account of obligations for payment, credit or reimbursement, and whether incurred prior to, during or following any proceeding in bankruptcy or reorganization. No rights

¹ The electric USB program is also subject to certain filing and reporting requirements administered by the Montana Department of Revenue (“DOR”). See § 69-8-402(9)(11).

or liens in USB funds by NWE, its estate or creditors are created or permitted under Montana law.

19. The Commission provided adequate public notice of all proceedings and an opportunity to be heard to all interested parties in this Docket. §§ 69-3-303, 69-3-104, and 69-8-202, MCA; and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act).

ORDER

1. NWE shall segregate both electric and natural gas USB funds in specifically identified USB trust accounts. The accounts shall be used exclusively for USB purposes. USB revenues shall be deposited in the USB trust accounts on a timely basis.

2. Such USB funds and accounts shall not be intermingled with any other NWE (or NorthWestern Corporation) funds or accounts, shall bear interest for the benefit of the USB program, and shall be clearly identified and treated as public purpose funds and not as NWE property.

3. NWE shall establish separate USB trust accounts within 15 days of the effective date of this Order. NWE is directed to report of the establishment of these accounts to the PSC within the same time period.

DONE AND DATED this day of August, 2003 by a vote of.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.